

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

IMPERIAL CABINET MANUFACTURING CO., INC.

and

Case 7-CA-46750

INTERIOR SYSTEMS LOCAL 1045,
MICHIGAN COUNCIL OF CARPENTERS

Robert Buzaitis, Esq.
for the General Counsel.

Nicholas Nahat, Esq.
(*Novara, Tesija & McGuire, P.L.L.C.*),
of Southfield, Michigan,
for the Charging Party.

BENCH DECISION AND CERTIFICATION

Ira Sandron, Administrative Law Judge. I heard this case on June 6, 2005, in Detroit, Michigan. Neither the Respondent nor anyone acting on its behalf appeared. After the General Counsel rested, I heard oral argument and issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth my findings of fact, conclusions of law, and remedy, with recommended order and notice to employees to be appended to the corrected final version of the decision. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of the portion of the transcript containing this decision.¹ The final version of my decision, after correction of oral and transcriptional errors and minor editorial and other revisions not affecting substance, and including recommended Order and notice to employees, is attached as appendix A to this Certification. The notice referenced in the Order is attached as appendix B.

Dated, Washington, D.C. June 27, 2005.

Ira Sandron
Administrative Law Judge

¹The bench decision appears in uncorrected form at pp. 29-34 of the transcript.

APPENDIX A

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations.

Statement of the Case

Ira Sandron, Administrative Law Judge. This matter arises out of an Order reissuing complaint and notice of hearing (complaint) issued on April 13, 2005, against Imperial Cabinet Manufacturing Co., Inc. (the Respondent), based on charges filed by Interior Systems Local 1045, Michigan Council of Carpenters (the Union) on October 27, 2003.

Pursuant to notice, I conducted a trial in Detroit, Michigan, on June 6, 2005. Despite proper notice,² neither the Respondent nor anyone acting on its behalf appeared or notified the General Counsel or the Office of Administrative Law Judges of any reason for that failure to appear.

Issue

Whether the Respondent, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), on about October 3, 2003, repudiated the terms of its collective-bargaining agreement with the Union; and thereafter through June 30, 2004, failed and refused to recognize the Union as the limited exclusive collective-bargaining representative of unit employees and failed and refused to abide by the terms of that agreement, in particular, failed and refused to make payments into various fringe benefit funds or to remit to the Union employees' union dues as per the dues check-off provisions.

Facts

Based on the unrebutted and credited testimony of the sole witness, John Gambino, the Union's director, and the formal documents in this case, I make the following findings of fact.

At all times material, the Respondent, with an office and place of business in Macomb, Michigan, has been in the business of wholesale and retail sale of kitchen cabinetry in the State of Michigan.

The Respondent's answer denied jurisdiction. The respondent subsequently failed to comply with the General Counsel's subpoena duces tecum seeking commerce information.³ In this situation, the General Counsel need establish only statutory jurisdiction, to wit, that the employer's activity in interstate commerce exceeds the de minimis level. See *Tropicana Products*, 122 NLRB 121(1958). In any event, records produced by Cardell Cabinetry establish that in the calendar year 2002, Cardell shipped from its Texas facility products, goods and

² See GC Exh. 1(k). The return receipt card shows that the complaint was served on the Respondent on April 14, 2005. The Respondent was unrepresented at the time, its prior counsel having withdrawn by letter dated March 8, 2005. See GC Exh. 8.

³ See GC Exh. 7, subpoena duces tecum dated May 24, 2005, sent to the Respondent by regular mail. It was not returned to the General Counsel, and delivery by the United States Postal Service is presumed.

materials valued in excess of \$50,000 to the Respondent in Michigan.⁴ Accordingly, I find that jurisdiction is properly asserted.

On July 1, 2001, the Respondent and the Union entered into a collective-bargaining agreement covering the following unit:⁵

All full time [and] regular part time production and maintenance employees, yard employees, truck drivers, operators, work leaders and working foremen, employed by the Employer at its facilities located within the geographic jurisdiction of the Union, but excluding office employees, professional and technical employees, guards and supervisors as defined in the Act.

The first paragraph states the agreement would “remain in full force and effect until 7/1/03 and thereafter unless changed in accordance with Article 25 of this Agreement.” (Emphasis and underline in original.)

Article 25 provides:

Should either party wish to modify or amend any provision of this Agreement, or to terminate said Agreement, notice of desire to modify, amend or terminate the Agreement shall be given to the other party not more than ninety (90) days nor less than thirty (30) days prior to 7-1-2003 or any subsequent anniversary date. (Emphasis and underline in original.)

The Respondent did not comply with the above time provisions. Only after July 1, 2003, more particularly, by letter from counsel dated October 3, 2003,⁶ did the Respondent notify the Union that it wished any change in the collective-bargaining agreement. Specifically, the letter stated that it served as notice of termination of the contract.

At the time of the letter, the Respondent employed three bargaining-unit employees. From that point on, the Respondent failed to abide by provisions in the agreement requiring it to make payments into various fringe benefit funds and to remit to the Union employees’ union dues pursuant to check-off procedures.

By letter dated October 8, 2003,⁷ the Union’s counsel responded that the contract had “rolled over” pursuant to the provisions of Article 25 and remained in full force and effect.

In May 2004, the Respondent gave the Union timely notice that it wished to terminate the agreement. No subsequent bargaining took place, and the contract expired by its terms on July 1, 2004. Accordingly, the period at issue is limited to on about October 3, 2003 through June 30, 2004.

Analysis and Conclusions

There can be no question that the Respondent failed to seek termination of the agreement pursuant to its express and unequivocal terms. By its untimely repudiation of the

⁴ GC Exh. 5.

⁵ GC Exh. 2.

⁶ GC Exh. 3.

⁷ GC Exh. 4.

contract and its failure to pay into various fringe benefit fund contributions and to transmit union dues, as the contract required, the Respondent failed and refused to bargain in good faith with the Union and thereby violated Section 8(a)(5) and (1). See *Secoma Glass & Aluminum Co.*, 339 NLRB No. 95 (2003) (not published in Board volumes); *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union:

(a) Repudiated the collective-bargaining agreement it had with the Union.

(b) Failed to make contractually required payments into fringe benefit funds for unit employees from about October 3, 2003 through June 30, 2004.

(c) Failed to remit to the Union the dues it withheld from employees' paychecks from about October 3, 2003 through June 30, 2004.

Remedy

The Respondent having engaged in certain unfair labor practices, it shall be ordered to take certain affirmative action designed to effectuate the policies of the Act.⁸ Specifically, having violated Section 8(a)(5) and (1) by failing and refusing to pay contractually required payments into fringe benefit funds for unit employees from about October 3, 2003 through June 30, 2004, the Respondent shall make whole those employees for any loss of benefits they may have suffered as a result. The Respondent shall be required to make all contractually required benefit payments or contributions that were not made between about October 3, 2003 and June 30, 2004, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, supra at 216. In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, the Respondent shall remit to the Union the dues it withheld from employees' paychecks from about October 3, 2003 through June 30, 2004, with interest on the dues to be computed in the manner prescribed in *New Horizons*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the

⁸ Since there is no longer a collective-bargaining relationship between the Union and the Respondent, a cease and desist order would not be appropriate.

following recommended⁹

ORDER

The Respondent, Imperial Cabinet Manufacturing Co., Inc., Macomb, Michigan, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make all benefit payments or contributions into fringe benefit funds as required by its collective-bargaining agreement with Interior Systems Local 1045, Michigan Council of Carpenters (the Union), from on about October 3, 2003 through June 30, 2004, as provided in the remedy section of this decision.

(b) Remit to the Union the dues it withheld from employees' paychecks, as required by said agreement, from about October 3, 2003 through June 30, 2004, as provided in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of moneys due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Macomb, Michigan, copies of the attached notice marked appendix B.¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 3, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

This concludes and finalizes my bench decision, issued June 6, 2005.

⁹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL make employees whole for any loss of benefits they suffered as a result of our unlawful repudiation of our collective-bargaining agreement with Interior Systems Local 1045, Michigan Council of Carpenters (the Union).

WE WILL make all benefit payments or contributions into fringe benefit funds as required by that agreement, from on about October 3, 2003 through June 30, 2004.

WE WILL remit to the Union the dues we withheld from employees' paychecks, as required by that agreement, from about October 3, 2003 through June 30, 2004.

IMPERIAL CABINET MANUFACTURING
CO., INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226-2569

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST

NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS
NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (313) 226-3244.

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